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JUL 24 2006

REMARKS

Claims 1-19 remain pending in the application.

The invention, as defined by claim 1, is specifically directed to a cervical collar having "a *lateral* reinforcing support member disposed in the region below the mandible bone of the wearer." Claims 18 and 19 are directed to a method of exercising and of fitting that defines the "*lateral* reinforcing support member" using nearly identical language.

On p. 5, ll. 1-2 of the specification, the location of the lateral support member is set forth as being "located on both sides of the cervical collar 10 in the wearer's neck region." In addition, the Merriam-Webster Online Dictionary defines the term "lateral" similarly as:

- 1 : of or relating to the side
- 2 : situated on, directed toward, or coming from the side
- 3 : extending from side to side.

The location of the "lateral reinforcing support member" is clearly shown in Figs 2 and 4 as being on the sides on the cervical collar. As a point of reference the front support member 18 is shown and described as being located on the "front" of the collar, while the rear support member 20 is shown and described as being located on the rear of the collar.

The "lateral," *i.e.*, situated on the side, location of the "lateral reinforcing member" of the present invention is neither taught nor fairly suggested by the *Calabrese* or *Monfardini* references relied upon by the Examiner, or any of the other references cited by the Examiner.

The Examiner maintains that "[t]he support [reference element 30] is located in the same place on the cervical collar that the support is located on the cervical collar in the present invention. As for being lateral, the examiner is interpreting lateral as meaning that the rigid support is disposed in the neck region below the mandible bone of the wearer." The Examiner

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further argues that "Applicant hasn't claimed supports on the side of the collar. Applicant simply claimed that the support was a lateral support." Applicant disagrees.

The support element 30 of *Calabrese* '226 is not located at the same place on the cervical collar as the *lateral* reinforcing support member claimed. The support element 30 is located at the front of the *Calabrese* '226 collar, not at the side or lateral location as presently claimed. The support element 30 is equivalent to front support element 18 of the present invention.

It appears that the Examiner has misread the figures in the *Calabrese* '226 patent. The Examiner's attention is drawn to Figure 3 and chin cavity 26 which lies directly above the support element 30. The location of the chin cavity 26 and support member 30 are described in *col. 22, ll. 18-24 and 28-30*:

The upper end of the bight portion of the body 13 is shaped to provide a chin cavity 26. A covering 28 [is fabricated] from a material such as moleskin, which is adhesively or otherwise secured on the inner surface of body 13 in the chin cavity 26.

The front half 12 is provided with a reinforcing rigid support member 30 on the outer surface of the bight portion... Member 30 has a curved upper end opposite the chin cavity 26 and extends for substantially the entire length of the bight portion of body 13.

Clearly, the support member 30 is located directly below and supports the chin cavity 26 which is located, by necessity, at the front of the collar, not the side, as the Examiner contends. Figures 2 and 3 of *Calabrese* '226 clearly shows the location of the chin cavity 26 and the support member 30.

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Furthermore, the Examiner's definition of "lateral" is not in accordance with the usage of this term given in the specification or its ordinary and customary dictionary definition.

As stated above, on p. 5, ll. 1-2 of the specification, the location of the lateral support member is set forth as being "located on both sides of the cervical collar 10 in the wearer's neck region." The location of the "lateral reinforcing support member" is also clearly shown in Figs 2 and 4 being on the sides on the cervical collar. And, the dictionary definition is "of or relating to the side; situated on, directed toward, or coming from the side; or extending from side to side." The Examiner's contentions notwithstanding, the term "*lateral* reinforcing support member" clearly and unambiguously claim that the support member is situated or located on the side of the cervical collar in accordance with the usage of this term in the specification and the dictionary definition of this term.

Thus, the Examiner's rejection is based not only on an improper definition of "lateral" but also upon the support member 30 of Calabrese '226 which is located at the front of the collar, not at a lateral location. For these reasons alone, the Examiner's rejection of the claims should be withdrawn.

Thus, the *Calabrese* '226 patent fails to disclose each and every feature of the claimed invention, and for this reason alone the rejection of claims 1, 7-11, and 15-16 must be withdrawn. Furthermore, the *Calabrese* collar also fails to disclose a rigid lightweight support "for providing sufficient lateral support to the wearer's head" to as required by claim 7, that the support is attached by a rivet as required by claim 9, that the support member is a plate as required by claim 10, or has a rounded corner as required by claims 11 and 15, and that the support plate has a color indicative of a material property as required by claim 16.

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With respect to claim 7, since the *Calabrese* '226 support 30 is not located on the side of the collar it cannot provide sufficient lateral support to a wearer's head" In fact, since member 30 is located directly in the front of the collar it provides no lateral support. With respect to claim 9, no rivet is disclosed on the non-existent lateral support of *Calabrese* '226. With respect to claim 10, the support member 30 is not a plate because it is not "a smooth flat thin piece of material" as that term is commonly defined, such as in the Merriam-Webster Online Dictionary. Lastly, the color, such as aluminum or silver, of the *Calabrese* support is "not indicative of a material property" as required by the claim since there are many different grades of aluminum having differing material properties; thus, there is no teaching that the color is indicative of a material property absent an expressed teaching.

None of the remaining references relied upon the Examiner remedies the deficiencies in the *Calabrese* reference. The *Monfardini* reference discloses an adjustable size cervical collar having elongated adjustment elements 20, 21 located at the rear and front of the collar for allowing the collar to adjust its size upward and downward to fit the neck of a user. There is no teaching or suggestion in *Monfardini* to place these front and rear supports on the sides of the collar as required by the claims. At best, the *Monfardini* supports would replace the front and rear supports taught by *Calabrese*. Nor does *Calabrese* teach or suggest that this should be done or is desirable. Moreover, there is no motivation to make the flexible molded collar of *Calabrese* into an adjustably-sized flat collar as taught by *Monfardini* without destroying the *Calabrese* invention.

Thus, the *Monfardini* patent, taken alone or in combination, fails to disclose each and every feature of the claimed invention, and for this reason alone the rejection of claims 2-6, 12-

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14, and 17-19 must be withdrawn. With respect to the method claims 18 and 19, there is no teaching or suggestion in any of the prior art of record that discloses the claimed method steps.

The examiner was requested to show proof for his contention that these method steps are old and well known or withdraw the rejection, but has failed to do so. Furthermore, the *Calabrese-Monfardini* combination also fails to disclose that the rounded corners of the support are capable of engaging the wearer's mandible as required by claim 5, and that the support is positioned parallel to the wearer's jawbone as required by claim 6.

However the references may be combined, they do not show or suggest the claimed invention. At best, they show isolated elements of the invention, with no suggestion of how to combine the disparate elements. Applicant submits that the invention is obvious only in the eyes of the Examiner, and only with the benefit of hindsight provided by Applicant's own disclosure.

Applicant has reviewed the remaining references cited, but not applied, but do not deem them to be material to the patentability of the claimed invention.

As such, independent claims 1, 18 and 19 are allowable over the prior art of record. In addition, claims 2-17 recite additional features that are also not found in the prior art of record.

In view of the foregoing, applicant respectfully requests allowance of the pending claims. If the Examiner believes that direct contact with Applicant's represent would advance the prosecution of this application, the Examiner is requested to contact the undersigned at the number listed below.

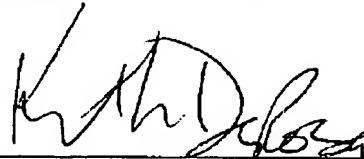
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It is respectfully submitted that all claims in the application are in condition for allowance. Reconsideration and withdrawal of all rejections are respectfully requested. Favorable notice to this effect and early Notice of Allowance are earnestly solicited.

Should the Examiner believe that direct contact with Applicant's attorney would advance the prosecution of this application, the Examiner is invited to contact the undersigned directly.

Respectfully submitted,



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